

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6580 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BADRUDDIN NIMJIBHAI

Versus

VIRAMGAM MUNICIPALITY AND ANOTHER

Appearance:

MR SA DESAI for Petitioner
MR MB FAROOQUI for respondent no.1
MR MR ANAND, G.P. with Ms Harsha Dewani, A.G.P.
for respondent no.2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 16/01/97

ORAL JUDGEMENT

Rule. Mr. M.B.Farooqui, learned Counsel waives service of notice of rule on behalf of respondent no.1.
Mr. M.R.Anand, learned Government Pleader waives service of notice of rule on behalf of respondent no.2.

At the request of learned Advocates appearing for the parties, the petition is heard today.

By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to direct the respondents, their servants and agents to allow the petitioner to reconstruct his cabin at its original place at the address mentioned in the cause title of the petition or to direct the respondents to grant alternative cabin space to the petitioner and accept the rent regularly.

It is the case of the petitioner that he was given a piece of land by respondent no.1 on rental basis and he had put-up a cabin for doing business. The petitioner has claimed that the cabin was demolished in May, 1995 by officers of respondent no.1-Municipality without giving notice or hearing to the petitioner though rent for the space allotted was paid upto March 1996. According to the petitioner, the action of demolition was bad in law, as the petitioner was inducted as a tenant by respondent no.1. The petitioner, therefore, served notice dated June 21, 1996 to the President of respondent no.1-Municipality and requested him to allocate the same space whereon earlier he had put-up cabin for doing business or to grant alternative space to enable him to do business. The notice served by the petitioner on respondent no.1 is produced at Annexure-B to the petition. Respondent no.1 vide reply dated June 27, 1996 informed the petitioner to approach Executive Committee of the Municipality. The reply given by respondent no.1 is produced by the petitioner at Annexure-C collectively to the petition. The petitioner has pleaded in the petition that the petitioner approached Executive Committee on respondent no.1, but neither the petitioner is allotted the same space on which earlier he was doing business nor offered any alternative space. The petitioner has claimed that in similar such circumstances, the Court (Coram : Rajesh Balia, J.) has given certain directions in Special Civil Application no.316/96 decided on March 15, 1996. Under the circumstances, the petitioner has filed the present petition and claimed reliefs to which reference is made earlier.

Mr. M.B.Farooqui, learned Counsel for respondent no.1 has informed the Court that similarly situated persons had approached the High Court by filing different petitions, wherein the Court had evolved a formula for accommodation of giving facility to carry on business to the petitioners of those petitions and necessary directions were given by the Court (Coram: M.S.Parikh, J.) on November 27, 1996. The learned Counsel

for the respondent no.1 has emphasised that no direction was given by the Court in the earlier petitions permitting the petitioner concerned to construct his cabin at its original place and, therefore, the prayer made by the petitioner to allot the space which was allotted earlier or to allow him to reconstruct his cabin at its original place, should not be granted by the Court. Mr. S.A.Desai, learned Counsel for the petitioner has stated at the Bar that the petitioner does not insist that he should be allowed to reconstruct his cabin at its original place, but the prayer of the petitioner to grant alternative cabin space, should be considered favourably.

From the stand taken by respondent no.1, it is evident that the petitioner is similarly situated in the matter of carrying on business in the cabin, though he had not resisted eviction on earlier occasion. Therefore, the respondents are under an obligation to treat the petitioner similarly alongwith other persons while carrying out the directions of the Court in Special Civil Applications no.7098,7109, 7223 and 7224 of 1995 decided on November 27,1995 by the Court. It is relevant to note that while disposing of those petitions, Court had neither restricted the observations made thereunder to the petitioners of those petitions nor prohibited respondent no.1 from extending similar treatment to similarly situated persons.

For the foregoing reasons, the petition partly succeeds. Respondent no.1 is directed to grant alternative cabin space to the petitioner on the same terms and conditions stipulated in the case of those cabin holders, who had instituted Special Civil Applications no. 7098, 7109, 7223 and 7224 of 1995. The petitioner is directed to abide by all the conditions which may be stipulated by respondent no.1 including payment of licence fee and/or rent and it is hoped that licence fee and/or rent that may be offered by the petitioner would be accepted by respondent no.1.

Rule is made absolute to the extent indicated hereinabove, with no order as to costs.

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